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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. GREGORY DWAYNE BROWN, Defendant and Appellant.	B192879 (Los Angeles County Super. Ct. No. KA 071144)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade D. Olson, Commissioner. Affirmed.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Theresa A. Patterson and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Gregory Dwayne Brown pleaded guilty to the sale of a controlled substance, to possessing cocaine base for sale, and admitted six prior convictions and two additional enhancements based on the prior convictions. The trial court suspended his sentence of 15 years four months and placed appellant on probation. Six months later, he was found to be in violation of probation and was sentenced. His notice of appeal was filed three days late; on August 15, 2005, we granted appellant's application to be relieved from this default.[1] The appeal is limited to issues arising from the revocation of probation; we affirm.

THE TERMS, AND THE VIOLATION, OF PROBATION

The conditions of probation that are relevant to this appeal are that appellant: (1) not use or possess any narcotics; (2) not associate with persons believed to be or known to be narcotic or drug users, sellers or buyers; and (3) obey all laws and orders of the court and the probation department.

The form used by the district attorney to request the revocation of appellant's probation states in a preprinted portion: "Subsequent to the defendant's grant of probation, undersigned was informed by way of the attached reports, incorporated herein by reference, that the defendant violated his probation by committing the following crime(s)." Immediately following this is typed in: "H.S. 11350 -- FAILED TO OBEY ALL LAWS." Among the multiple attachments to this form is a report by officer Daryll Johnson of the Pomona Police Department that sets forth in narrative form the events of October 29, 2005, and November 17, 2005, which are set forth below, that led to the revocation of appellant's probation.

Officer Johnson testified at the parole revocation hearing. Johnson stated that on October 29, 2005, he found appellant in a car with Calvin Flowers; there was cocaine base and a crack pipe in plain view in the center console between appellant and Flowers. Flowers admitted that the narcotics paraphernalia belonged to him. Appellant was arrested,

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[1] We granted the motion to take judicial notice of the contents of the superior court file.

but the case was ultimately dismissed and appellant was released from custody on November 16 or 17, 2005.

On November 17, 2005, Officer Johnson went to room 9 in the Trella motel in Pomona. The room was rented by appellant's girlfriend. When Johnson entered the room, he saw appellant lying on his stomach on the right side of the bed. His head was on a pillow, and his hands were underneath the pillow. Johnson found three pieces of cocaine base under the pillow on the left side of the bed, approximately 12 to 16 inches from appellant's hands. The cocaine weighed 0.56 grams. Johnson found men's clothing of appellant's size stored in the motel room and a little less than $300 in two men's jackets hanging in the closet.

The police report prepared by Johnson states that appellant was "placed under arrest for violation of 11350 H&S" and taken into custody.

Following Johnson's testimony -- appellant presented no evidence -- the trial judge, Commissioner Wade Olson, noted that the conditions of probation had been imposed by Commissioner Olson. The court noted that one of those conditions was that appellant was not to "associate with persons known by him or known to be or appear to be drug people. He's not to be around any paraphernalia. I've got an October 29th situation where he's in an automobile which just so happens to be cocaine again. He's on probation for sales of cocaine, possession of cocaine. Now he's in a vehicle, October 29th where there's cocaine and a crack pipe. . . . [¶] . . . [¶] Then, his girlfriend, please, I mean he must know his girlfriend. Three rocks under the pillow. He's laying [*sic*] on the bed. His hand [is] 16 inches from it. His clothes are in the closet. His shoes are there. His mail is there." The court concluded that the circumstances clearly showed that appellant had violated the conditions of probation by "associating with people and clearly being in the presence of . . . drugs."

DISCUSSION

1. Substantial Evidence Supports the Finding That Appellant Violated the Conditions of Probation

Appellant contends that the evidence is insufficient to establish that: (1) appellant knew that Flores was a drug seller or user; and (2) appellant used or possessed the drugs found in the motel room.

We apply, as we must, the substantial evidence test. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.)[2]

It was reasonable to infer that appellant knew that Flowers was a drug seller or user. The police report, on which the trial court was empowered to rely (*People v. Winson* (1981) 29 Cal.3d 711, 718-719), showed that Flowers pleaded guilty for possessing the narcotics found in the car. Since the cocaine base and a crack pipe was found in plain view in the center console of the car between appellant and Flowers, and since appellant is familiar with drug paraphernalia, it is a reasonable inference that appellant knew that Flowers was a user of drugs. In fact, one might say that it is difficult to draw any other inference. Appellant's contention that there is "nothing in the record to suggest that appellant actually knew" that Flowers was a drug user ignores that Flowers was in fact a drug user and that appellant, who was familiar with cocaine base and crack pipes, saw them in close proximity to Flowers. Thus, appellant was in violation of the condition that he not associate with persons known to be drug users.

Appellant contends that there is nothing in the record to support a finding "that appellant knew that appellant's girlfriend was a user or seller of controlled substances." Appellant was found lying on a bed with his hands 16 inches away from three pieces of rock cocaine weighing 0.56 grams. He was no casual visitor to the room, as shown by the

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[2] "Under that standard [the substantial evidence test], our review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision." (*People v. Kurey, supra,* 88 Cal.App.4th 840, 848-849, fns. omitted.)

presence of clothing in the room belonging to appellant. "Constructive possession occurs when the accused maintains control or a right to control the contraband; possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another." (*People v. Newman* (1971) 5 Cal.3d 48, 52, disapproved on other grounds by *People v. Daniels* (1975) 14 Cal.3d 857, 862.) It is a reasonable inference that appellant was in constructive possession of the rock cocaine that was inches away from his hand. Thus, appellant violated his probation in the motel room not because his girlfriend was a drug user, but rather because he was in possession of cocaine.

There is no merit to appellant's contention that appellant's probation was revoked because he was found to be "in the presence of rock cocaine," and that this was not a condition of his probation. The record is clear that probation was revoked because appellant associated with a person known to be a drug user, and because he was found in constructive possession of cocaine in the motel room.

2. Appellant's Right to Due Process Was Not Violated

Appellant contends that his right to due process was violated because his probation was revoked on grounds other than those stated in the district attorney's request to revoke probation.

The district attorney's request to revoke probation stated, after the language that had been typed in on the printed form, that: "H.S. 11350 -- FAILED TO OBEY ALL LAWS." Appellant points to the fact that his probation was revoked because he associated with a drug user and because he was found in possession of cocaine, and not because he failed to obey all laws.

The printed portion of the form that precedes "H.S. 11350 -- FAILED TO OBEY ALL LAWS" advises that the district attorney was informed of the probation violation "by way of the attached reports, incorporated herein by reference." The police report prepared by Officer Johnson sets forth the transactions of October 29, 2005, and November 17, 2005, in detail. That appellant was not surprised by the fact that the district attorney relied on the

two incidents of October 29, 2005, and November 17, 2005, is shown not only by the fact that the police report was attached to the request to revoke probation, it is shown by the course of the probation revocation hearing. At no time did appellant's counsel indicate that he was unprepared for, or surprised by, Johnson's testimony at the hearing that related the two incidents in question. In fact, appellant's counsel cross-examined Johnson, and presented argument, without ever indicating that counsel was unaware of the reasons for the district attorney's request to revoke probation. Even if the district attorney's request to revoke probation is analogous to an information charging a crime, and we do *not* hold that it is, an information may be amended, if it does not prejudice the defendant. Under the circumstances of this hearing, which proceeded without objection by the defense, it would have been an idle act to formally "amend" the district attorney's request.

The fact of the matter is that everyone, appellant included, was fully aware of the evidence the district attorney intended to rely on to support the request to revoke probation. Nor is it a valid proposition that the district attorney is limited to allegations in the request to revoke probation. While, conceivably, a probationer and his attorney might be surprised by a new theory propounded by the district attorney during the revocation hearing, the remedy under these circumstances is to grant a continuance, and not to declare the entire proceeding invalid. In any event, there was no surprise in this case, and appellant had adequate notice of the grounds on which his probation was revoked.

DISCUSSION

The order revoking probation and the judgment are affirmed

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FLIER, J.

We concur:

COOPER, P. J. RUBIN, J.